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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

STATION CASINOS, INC

- ☒ Affects this Debtor
- ☐ Affects all Debtors
- ☐ Affects Reno Land Holdings, LLC
- ☐ Affects River Central, LLC
- ☐ Affects Tropicana Station, LLC
- ☐ Affects FCP Holding, Inc.
- ☐ Affects FCP Voteco, LLC
- ☐ Affects Fertitta Partners LLC
- ☐ Affects Northern NV Acquisitions, LLC
- ☐ Affects FCP MezzCo Parent, LLC
- ☐ Affects FCP MezzCo Parent Sub, LLC
- ☐ Affects FCP MezzCo Borrower VII, LLC
- ☐ Affects FCP MezzCo Borrower VI, LLC
- ☐ Affects FCP MezzCo Borrower V, LLC
- ☐ Affects FCP MezzCo Borrower IV, LLC
- ☐ Affects FCP MezzCo Borrower III, LLC
- ☐ Affects FCP MezzCo Borrower II, LLC
- ☐ Affects FCP MezzCo Borrower I, LLC
- ☒ Affects FCP PropCo, LLC

Chapter 11

Case No. BK-09-52477-GWZ
 Jointly Administered

**JOINT MOTION OF STATION
 CASINOS, INC. AND FCP PROPCO,
 LLC PURSUANT TO 11 U.S.C. §§
 105(a), 363(b)(1), 365(d)(3) AND
 365(d)(4)(B)(ii) AND FED. R. BANKR.
 9019 FOR ENTRY OF AN ORDER
 APPROVING SECOND AMENDMENT
 TO AMENDED AND RESTATED
 MASTER LEASE COMPROMISE
 AGREEMENT**

Hearing Date: May 5, 2010
 Hearing Time: 10:00 a.m.
 Hearing Place: 300 Booth Street
 Reno, NV 89509

1 TO THE HONORABLE GREGG W. ZIVE, UNITED STATES BANKRUPTCY JUDGE,
 2 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN INTEREST:

3 Station Casinos, Inc. ("SCI") and FCP PropCo LLC ("Propco", and together with
 4 SCI, the "Parties" or the "Debtors") submit this motion (the "Motion") pursuant to sections
 5 105(a), 363(b)(1), 365(d)(3) and 365(d)(4)(B)(ii) of title 11 of the United States Code, 11 U.S.C.
 6 §§ 101 *et seq.* (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy
 7 Procedure (the "Bankruptcy Rules") for an order *inter alia*: (i) approving the Second Amended
 8 And Restated Master Lease Compromise Agreement (the "Second Compromise Amendment") (a
 9 copy of which is annexed hereto as Exhibit 1) between SCI and Propco¹; and (ii) authorizing SCI
 10 and Propco to carry out and abide by the terms of the Second Compromise Amendment and take
 11 all actions reasonably necessary to perform their respective obligations thereunder. Concurrently
 12 herewith and in support of the Motion, Propco submits the Declaration of Robert Kors and SCI
 13 submits the Declaration of Richard Haskins. In support of the Motion, SCI and Propco
 14 respectfully represent as follows:

15 **I. Jurisdiction and Venue**

16 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C.
 17 §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
 18 This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

19 **II. Relief Requested**

20 2. By this Motion, the Debtors seek entry of an order, a proposed form of
 21 which is annexed as Exhibit 2, approving the Second Compromise Amendment and authorizing
 22 the Debtors to enter into and abide by the terms of the Second Compromise Amendment and take
 23 all actions reasonably necessary to perform their respective obligations thereunder pursuant to
 24 sections 105(a), 363(b), 365(d)(3) and 365(d)(4)(B)(ii) of the Bankruptcy Code and Bankruptcy
 25 Rules 6004(h) and 9019.

26
 27
 28 ¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Second
 Compromise Amendment.

1 **III. Preliminary Statement**²

2 3. As the Court is well aware, the Master Lease has been a lightning rod for
3 controversy throughout these cases, perhaps most notably in late 2009. At that time the Opco
4 Lenders threatened to refuse to permit SCI to use cash collateral to pay any more rent under the
5 Master Lease, and the Propco Lenders, in turn, threatened to seize the Propco Properties if the
6 Master Lease was rejected and Propco lost the ability to service the Propco Lenders' debt due to
7 a loss of the rent payments.

8 4. Rather than subject their respective estates to the risks and uncertainty
9 associated with an uncontrolled separation of the Propco Properties from the Station enterprise,
10 SCI and Propco entered into, and ultimately obtained Court approval of, a "master lease
11 compromise agreement." That initial compromise significantly reduced SCI's rental payments
12 under the Master Lease for three months (which subsequently was extended for an additional two
13 months). In exchange, SCI committed to provide Propco with certain "transition services"
14 designed to create for Propco a fair opportunity to transition management of the Propco
15 Properties away from SCI and to a new manager in the event these cases eventually resulted in a
16 separation of SCI and Propco.

17 5. At the time of court approval of the First Compromise Agreement in
18 December of 2009, SCI and Propco viewed the "transition services" as "downside" protection
19 for Propco, because the Debtors did not believe that a separation of SCI and Propco was the
20 preferred path for the Debtors' restructuring efforts. Rather, the Debtors believed that the First
21 Compromise Agreement would provide them with a window of time in which to try to negotiate
22 a consensual plan that both held the enterprise together and maximized value for all of the
23 estates.

24 6. As discussed in more detail below, the Debtors' efforts to arrive at such a
25 plan could not overcome the conflicting desires of the Debtors' two principal lender groups.
26 Stated in the simplest of terms, the Propco Lenders demonstrated their desire to own the Propco
27

28 ² All capitalized terms used in the Preliminary Statement shall have the meanings ascribed to those terms in subsequent sections of the Motion.

1 Assets, while the Opco Lenders demonstrated their desire to have the Opco Assets sold. As a
2 result, the Debtors have formulated and filed a Joint Plan that achieves both of these objectives,
3 with the Propco Lenders obtaining ownership of the Propco Properties through what is, in
4 essence, a “friendly” foreclosure, and the OpCo Lenders receiving the net proceeds from the sale
5 of the Opco Assets upon culmination of an auction process designed to produce the highest and
6 best offer for those assets.

7 7. Thus, the separation of SCI and Propco that existed as a contingency plan
8 under the First Compromise Agreement has now become a reality, as evidenced by the Joint
9 Plan. That evolution from contingency plan to Joint Plan has caused the parties to think in more
10 detailed terms about how the separation will occur and what sort of transitions SCI and Propco
11 will undergo to successfully emerge from bankruptcy after that separation. The Second
12 Compromise Amendment is the result of clarifications, modifications and refinements to the
13 First Compromise Agreement, as amended, that SCI and Propco have concluded are needed to
14 facilitate the more comprehensive separation and transition plan that will be needed as SCI and
15 Propco proceed to extricate themselves from one another. Unlike the First Compromise
16 Agreement (which was strongly opposed by the Propco Lenders), the Second Compromise
17 Amendment has the full support of the Propco Lenders including the further reduction in rent to
18 a “break-even” level for SCI and its estate. The terms of the Second Compromise Amendment
19 are summarized in section IV.C below.

20 **IV. Statement of Facts**

21 **A. Case Background and Status.**

22 8. The Debtors commenced the Chapter 11 Cases by each filing a voluntary
23 petition for relief under chapter 11 of the Bankruptcy Code on July 28, 2009 (the “Petition
24 Date”), in the United States Bankruptcy Court for the District of Nevada (this “Court”).

25 9. The Debtors continue to operate their businesses and manage their affairs
26 as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official
27 committee of unsecured creditors (the “Committee”) was appointed in the Chapter 11 Cases on
28 August 13, 2009. No trustee or examiner has been appointed in the Chapter 11 Cases.

10. As the Court is well aware, these Chapter 11 Cases have given rise to their own vernacular. Among other things, the Debtors' assets have generally been bifurcated into the "Propco Assets" and the "Opco Assets."

11. The Propco Assets consist of the four properties owned by Propco – Palace Station Hotel & Casino, Boulder Station Hotel & Casino, Sunset Station Hotel & Casino and Red Rock Casino Resort Spa (collectively, the "Leased Hotels" or the "Propco Properties") – together with the related furniture, fixtures and equipment ("FF&E") and other assets used in connection with the operation of those Properties. Almost all of the Propco Assets serve as collateral to secure the repayment of Propco's prepetition mortgage loan (the "Propco Mortgage Loan") from its senior secured lenders (the "Propco Lenders").

12. The Opco Assets, in turn, consist of all of SCI's assets, including its direct and indirect equity interests in its debtor and non-debtor subsidiaries (collectively with SCI, the "Opco Group"), *other than* the Propco Assets and the chain of subsidiaries that own, directly or indirectly, the equity interests in Propco (also known as the "Mezz Stack" or the "Mezzco Debtors"). Generally speaking, the Opco Assets are comprised of fourteen casino properties and their related assets, as well as SCI's direct and indirect interests in a variety of other management and development opportunities.³ Certain, but not all, of the Opco Assets serve as collateral to secure the repayment of SCI's prepetition secured loan (the "Opco Loan") from its senior secured lenders (the "Opco Lenders"). In addition, there are certain assets that are owned by members of the Opco Group but fall within the Propco Assets (as that term is defined herein), because they are used exclusively or predominantly in connection with the operation of the Propco properties (the "Excluded Assets"). The Excluded Assets are detailed as Annex 1 to the Second Compromise Amendment, which is attached as Exhibit 1 to this Motion.

13. The Opco Assets and the Propco Assets are under the common management of SCI. As the Court is well aware, the most contentious moments in these cases have occurred when creditors of SCI and Propco perceived that their respective interests were in

³ A more detailed description of the Propco Assets and the Opco Assets is contained in the Disclosure Statement (defined below).

1 conflict and that either SCI and its estate was receiving a benefit that was coming at the expense
2 of Propco and its estate, or *vice versa*. Perhaps the most notable examples are the controversies
3 that have arisen from time to time regarding the Master Lease (defined below), pursuant to which
4 SCI leases the Propco properties from Propco (the “Master Lease”).

5 14. Throughout these Chapter 11 Cases, the Debtors have attempted to
6 preserve and maximize the value of both the Opco Assets and the Propco Assets and have
7 advocated for a plan of reorganization that would keep all of the properties under SCI
8 management and under the “Station” umbrella, albeit with a significantly restructured balance
9 sheet. The Debtors believed that such a plan would be the best way to maximize value for
10 creditors, maintain the synergies of common management, and reap the benefits of a highly
11 regarded brand and a proven and respected management team. The Debtors also believed that
12 any plan that would separate the Opco Assets from the Propco Assets would have the potential to
13 be both complicated and costly as the parties tried to extricate themselves from their various
14 interrelationships.

15 15. Until recently, the Debtors thought that their major creditors shared
16 similar beliefs. Indeed, in December of 2009, the Debtors sought and obtained Court approval
17 for a hard-fought and contentious First Compromise Agreement, which was designed primarily
18 to provide the parties with a 3-month window of time to try to arrive at just such a plan.

19 16. Notwithstanding the Debtors’ desire and efforts to forge a consensual plan
20 to keep the enterprise together, through the Debtors’ discussions and negotiations with their
21 stakeholders, it became clear to the Debtors that the interests and desires of the Opco Lenders
22 and the Propco Lenders – the two groups with the principal economic interests in these cases –
23 were sufficiently divergent that a separation of the Opco Assets and the Propco Assets was the
24 only viable plan for the Debtors to pursue. Stated in the simplest of terms, the Propco Lenders
25 demonstrated their desire to own the Propco Assets, while the Opco Lenders demonstrated their
26 desire to have the Opco Assets sold.

27 17. The Debtors heard their lender constituents loudly and clearly and
28 promptly formulated a plan providing for: (a) what is essentially a foreclosure by the Propco

1 Lenders on those Propco Assets that are collateral for the Propco Mortgage Loan, coupled with
 2 the purchase of certain other non-collateral assets; and (b) a sale of the Opco Assets, as the
 3 culmination of an auction process designed to procure the highest or otherwise best available
 4 offer for those assets.

5 18. On March 24, 2010, Debtors filed the *Joint Chapter 11 Plan of*
 6 *Reorganization for Station Casinos, Inc. and its Affiliated Debtors (Dated March 24, 2010)*
 7 [Docket No. 1131-1] (the “Joint Plan”) and the *Disclosure Statement to Accompany Joint*
 8 *Chapter 11 Plan of Reorganization for Station Casinos, Inc. and Its Affiliated Debtors (dated*
 9 *March 24, 2010)* [Docket No. 1130-1] (the “Disclosure Statement”). The hearing on approval of
 10 the Disclosure Statement is scheduled for May 5, 2010.⁴

11 19. The sale of Opco Assets is an essential component of the Joint Plan. The
 12 Joint Plan contemplates that the Opco Assets will be sold to the highest bidder, with the net
 13 proceeds of that sale to be distributed to creditors in accordance with the respective priorities of
 14 their claims. The Joint Plan further contemplates that the sale process will run roughly
 15 contemporaneously with the solicitation of votes on the Joint Plan and that the auction will occur
 16 shortly before the confirmation hearing on the Joint Plan, but sufficiently in advance of the
 17 confirmation hearing so that the terms of the proposed sale to the highest bidder will be known
 18 and available for the Court’s consideration and approval at the time of the confirmation hearing.

19 20. The Propco Assets, including the Excluded Assets, will **not** be included in
 20 the sale. The Excluded Assets consist entirely of assets that are to be transferred to Propco or
 21 New Propco (as defined in the Joint Plan) as part of the SCI/Propco separation.

22 21. As discussed in detail below, the Second Compromise Amendment is an
 23 interim step towards effectuating the SCI/Propco separation that is contemplated by the Joint
 24 Plan and is fully supported by the Propco Lenders. The Second Compromise Amendment sets
 25 forth the manner in which the Parties will address their respective obligations under the Master
 26

27 ⁴ The Debtors anticipate that the Joint Plan and Disclosure Statement will each be modified and/or
 28 supplemented prior to the May 5, 2010 hearing in order to reflect further evolution of the Joint Plan as a
 result of ongoing discussions between the Debtors and various interested parties.

1 Lease during the period prior to confirmation of the Joint Plan, as well as detailing certain asset
2 transfers and transition services that will lay the foundation for the SCI/Propco separation.

3 **B. Master Lease Status.**

4 22. Propco, as lessor, and SCI, as tenant, are parties to the Master Lease
5 pursuant to which SCI leases from Propco the real property and improvements owned by Propco
6 and associated with the Leased Hotels. The Leased Hotels, in turn, are operated and managed by
7 SCI and certain of its non-debtor operating subsidiaries.

8 23. Among other things, the Master Lease provides for monthly rental
9 payments from SCI to Propco in amounts that exceed the amounts that Propco requires to meet
10 its ordinary debt service obligations and any other expenses not covered by SCI under the “triple
11 net” provisions in the Master Lease. Subject to certain conditions, the governing credit
12 documents permitted some of that surplus cash to be upstreamed as dividends to the mezzanine
13 entities that own equity up the Propco “stack” to service their debt, with additional amounts then
14 ultimately “flowing back” to SCI as the ultimate parent entity.

15 24. Due to the severe recession and its impact on the Las Vegas economy the
16 financial performance of the Propco Casinos (as measured by certain specified financial metrics)
17 deteriorated to the point that the amount of the surplus cash that was paid “up” through the
18 Propco stack and ultimately “flowed back” to SCI was restricted. Upon the event of default that
19 was triggered when these Chapter 11 Cases were filed, the rights of the mezzanine lenders to any
20 dividends, as well as the rights of SCI to any “flow back”, were cut off altogether, resulting in all
21 of the surplus cash being “trapped” at Propco.

22 25. On December 11, 2009, after notice and a fulsome hearing attended by all
23 of the Debtors’ major creditor constituencies, the Court approved the Debtors’ *Joint Motion of*
24 *Station Casinos, Inc. and FCP PropCo, LLC Pursuant to 11 U.S.C. §§ 105(a), 363(b)(1),*
25 *365(d)(3) and 365(d)(4)(B)(ii) and Fed. R. Bankr. 9019 for Entry of an Order Approving Master*
26 *Lease Compromise Agreement* dated November 19, 2009 [Docket No. 587] by entering an order
27 approving and authorizing Propco and SCI to enter into and abide by the original Amended and
28 Restated Master Lease Compromise Agreement, dated December 11, 2009 (the “First

1 Compromise Agreement”). *See Order Approving Master Lease Compromise Agreement*
 2 *Pursuant To 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and 365(d)(4) And Fed. R. Bankr. P.*
 3 *9019* entered on December 11, 2009 [Docket No. 962] (the “Compromise Agreement Order”).
 4 Pursuant to the First Compromise Agreement and the Compromise Agreement Order, SCI was
 5 authorized to pay, and Propco to accept Reduced Rent during the Deferral Period, with Deferred
 6 Rent accruing and payable as provided in the First Compromise Agreement. In consideration for
 7 the agreement of Propco to accept Reduced Rent, SCI, among other things, agreed to provide
 8 transition services to Propco if the Master Lease ultimately was rejected by SCI.

9 26. The First Compromise Agreement was extended for an additional two
 10 months when this Court approved the *Joint Motion of Station Casinos, Inc. and FCP PropCo,*
 11 *LLC Pursuant to 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and 365(d)(4)(B)(ii) and Fed. R.*
 12 *Bankr. P. 9019 For Entry of an Order Approving First Amendment to Amended and Restated*
 13 *Master Lease Compromise Agreement*, dated February 24, 2010 [Docket No. 1014], after notice
 14 and a hearing held on March 2, 2010. *See Order Approving First Amendment to Amended and*
 15 *Restated Master Lease Compromise Agreement Pursuant to 11 U.S.C. §§ 105(a), 363(b)(1),*
 16 *365(d)(3) and 365(d)(4) and Fed. R. Bankr. P. 9019* entered on March 4, 2010 [Docket No.
 17 1042].

18 **C. The Second Compromise Amendment.**

19 27. As was the case in connection with the negotiation of the First
 20 Compromise Agreement, because of the diverging interests of the SCI and Propco estates in
 21 connection with the Master Lease, responsibility for representation of Propco’s interests in
 22 connection with the negotiation of the Second Compromise Amendment was assumed by the two
 23 independent members of Propco’s board, Messrs. Robert White and Robert Kors, who were
 24 advised by Propco’s separate counsel, Gibson, Dunn & Crutcher LLP (the same individuals and
 25 counsel who represented Propco in connection with the First Compromise Agreement and the
 26 First Compromise Amendment).

27 28. The Second Compromise Amendment represents an evolution from the
 28 First Compromise Agreement. The First Compromise Agreement was entered into at a relatively

early stage in these cases, at a time when the parties' attention was focused largely on the Master Lease and the significant rental payments required of SCI thereunder. During that time, detailed plan discussions were somewhat stalled due to the impending lender showdown as the December rent payment approached. In essence, the First Compromise Agreement was forged to break the deadlock over the Master Lease rental payments in order to permit the parties to focus their attention on plan discussions and at a time when the Debtors still believed that an SCI/Propco separation was unlikely.

29. With the First Compromise Agreement in place, the Master Lease disputes were set aside and attention turned to plan issues. The Joint Plan is the result of the discussions and negotiations that ensued. While the First Compromise Agreement was a short-term solution to buy time, the Second Compromise Amendment represents a more meaningful step towards the separation of SCI and Propco that the Joint Plan now contemplates. Consequently, the Second Compromise Amendment is based on the same basic concepts as the First Compromise Agreement (i.e., rent relief for SCI in exchange for transition assistance for Propco), but those concepts have been expanded, refined and clarified to convert the First Compromise Agreement from a short-term solution designed to buy time to a more definitive step towards the SCI/Propco separation.

30. The pertinent terms of the Second Compromise Amendment include, among others, the following mutual accommodations⁵:

- Propco, with the consent of the Propco Lenders, has agreed to further reduce rent to a "break-even" level for SCI and its estate. The rent payable in cash to Propco shall be reduced for May 2010 and each month thereafter until the effective date of a Consensual Plan, as defined in the Second Compromise Amendment, (subject to earlier termination if the Master Lease is rejected by SCI) from approximately \$21,449,000 per month under the Master Lease to an amount equal to EBITDAR⁶ for the Leased Hotels in the prior calendar month minus (i) actual capital expenditures not paid from the "FF&E Reserve Accounts," (ii) certain out

⁵ The description of the Second Compromise Amendment contained in the Motion is intended as a summary only and is qualified in its entirety by the actual terms of the Second Compromise Amendment.

⁶ "EBITDAR" means Earnings (or Net Income) Before Interest, Taxes, Depreciation, Amortization and Rent.

of pocket operating expenses of the Leased Hotels (defined as “Owner’s Expenses”) to the extent not already deducted in the computation of EBITDAR, and (iii) rent due under the Boulder Station ground lease (as so calculated, the “Reduced Rent”). The 120% of adequate protection floor included in the Prior MLCA has been removed. Under the new calculation, Reduced Rent cannot exceed EBITDAR for the Leased Hotels. The Debtors estimate that Reduced Rent under the Second Compromise Amendment will be approximately \$ 1,533,000 less per month than if rent were being calculated under the First Compromise Agreement (and approximately \$ 7,780,000 less per month than if rent were being calculated under the Master Lease itself).

- The difference between Reduced Rent and contract rent under the Master Lease (such difference, the “Deferred Rent”) will be either (a) paid in cash on an administrative basis if the Master Lease is ultimately assumed by SCI, or (b) added to the prepetition rejection damages claim if the Master Lease is ultimately rejected by SCI.
- Prior to initiation of transition, SCI will continue to perform all of its other obligations under the Master Lease, with SCI’s obligation to pay the Reduced Rent under the Compromise Agreement constituting an administrative claim against SCI, payable in accordance with the terms of the Second Compromise Amendment.
- Upon rejection of the Master Lease, Propco will hold an allowed, partially secured prepetition claim against SCI for rejection damages equal to the amount of Deferred Rent plus the amount of Propco’s statutory lease rejection claim, subject to determination.
- Because the statutory lease rejection claim cap is lower than the nominal claim for rent under the Master Lease both before and after credit for the value of foreclosed collateral, the amount of the lease rejection damage claim will not be reduced by the surrender of any of the collateral securing the lease obligations, but the claim will be rendered fully unsecured upon the transfer of such collateral to Propco.
- SCI and the Operating Subsidiaries have agreed to provide the following transition services after the occurrence of a Transition Event (as defined in the Second Compromise Amendment):
 - SCI and the Operating Subsidiaries shall assist the Mortgage Lenders (and any designated replacement manager) with licensing by applicable gaming authorities by providing information requested by gaming authorities, among other things.
 - SCI and the Operating Subsidiaries shall continue to operate the Leased Hotels under their own gaming licenses on an expense reimbursement and fee-for-service basis for a period of up to 270

1 days post-rejection. During this period, the Leased Hotels will be
2 operated as if no rejection of the Master Lease or License
3 Agreement had occurred, provided that SCI and the Operating
4 Subsidiaries will not have any financial obligations to Propco
5 under the Master Lease.

- 6 ○ SCI and the Operating Subsidiaries shall permit Propco, the
7 Mortgage Lenders and any designated replacement manager to use
8 the database of Primary Customers, other intellectual property and
9 reservations services, including access to all Transactional Data in
10 an electronically accessible and usable format.
- 11 ○ SCI and the Operating Subsidiaries shall permit Propco, the
12 Mortgage Lenders and any designated replacement manager to
13 make offers of employment to certain employees of SCI and the
14 Operating Subsidiaries that are exclusively or primarily engaged in
15 the operation of the Leased Hotels.
- 16 ○ SCI and the Operating Subsidiaries shall deliver to Propco, the
17 Mortgage Lenders and any designated replacement manager
18 financial, accounting and other information that pertains
19 exclusively to the Leased Hotels or is otherwise necessary for the
20 day to day operation of the Leased Hotels for both licensing and
21 transition purposes including preparation of balance sheets for the
22 Leased Hotels, and will permit onsite access to records, onsite
23 observation of operations and access to senior managers, provided
24 that access to confidential or competitive information shall be
25 subject to prior execution of a confidentiality agreement.
- 26 ○ SCI and the Operating Subsidiaries agree that, following rejection
27 of the Master Lease, SCI and the Operating Subsidiaries shall be
28 deemed to be operating the Leased Hotels for the benefit of
Propco, and all cash flow from operations of the Leased Hotels,
after payment of all amounts to be paid to SCI and the Operating
Subsidiaries under the Second Compromise Amendment, shall be
property of and shall be delivered to Propco. During the first sixty
days of transition services, SCI and the Operating Subsidiaries will
receive expense reimbursement only. Thereafter, Propco shall pay
SCI and the Operating Subsidiaries a management fee of two
percent of gross revenue plus five percent of EBITDA of the
Leased Hotels, in addition to expense reimbursement.
- SCI and the Operating Subsidiaries will provide a reasonable
period of time after they cease providing transition services for
Propco to rebrand the Leased Hotels to eliminate all mentions of
the name "Station."
- SCI and the Operating Subsidiaries agree that, pending transfer to

Propco of all collateral granted by SCI and the Operating Subsidiaries to secure the Master Lease and all other personalty to be sold to Propco under the Second Compromise Amendment, all such personal property will remain at the Leased Hotels and be available for use in their operation, and, subject to its obligations regarding re-branding, Propco will have a license to use all such collateral in the operation of the Leased Hotels after rejection and until transfer of title is completed, including after the termination of other transition services.

- SCI and the Operating Subsidiaries will cooperate in a consensual foreclosure of Propco's liens on such collateral and will sell outright certain tangible and intangible personal property, including the names Red Rock, Palace, Boulder and Sunset, that is not subject to a lien to Propco but is used primarily with respect to the Leased Hotels or is essential to the operation of the Leased Hotels, with such sales being subject to Court approval.
- Propco will receive the full benefit of the License Agreement during the transition period, including delivery of the list of SCI customers that predominantly play at a Leased Hotel, and Propco agrees that, subject to such performance, any monetary claim for rejection damages under the License Agreement shall be a general unsecured claim. Propco will, however, reserve any Bankruptcy Code section 365(n) rights it may have as licensee under the License Agreement.
- SCI and Propco agree that any asset transfer, sale, assignment, or licensing by SCI or an Operating Subsidiary contemplated in the Second Compromise Amendment or under Annex 1 thereto shall be (i) made free and clear of all liens—subject to the approval of the Bankruptcy Court upon reasonable notice and a hearing and without prejudice to the rights (including, without limitation, all rights under the Bankruptcy Code) of any secured creditor holding a perfected lien on the assets to be transferred sold, assigned or licensed and (ii) made subject to the approval of the Bankruptcy Court upon reasonable notice and a hearing.

31. All of the elements of the compromise enumerated above are more fully set forth in the Second Compromise Amendment, which is incorporated herein by reference. In the event of any inconsistencies, the terms of the Second Compromise Amendment shall control.

32. The accommodations and adjustments to the terms of the First Compromise Agreement embodied in the Second Compromise Amendment are essential steps in laying the groundwork for the smooth and effective separation of the businesses of Propco and

SCI and its affiliated debtor and non-debtor wholly-owned subsidiaries – a course of action that already has significant support from the Debtors’ major creditor constituencies and upon which the Joint Plan is based. The Debtors believe that accomplishing such a smooth transition is in the best interests of the respective estates of both SCI and Propco. SCI and Propco seek, at this time, authority to implement the terms of the Second Compromise Amendment. After the Second Compromise Amendment is approved, to the extent that any issues or disputes arise regarding the process or manner in which the Second Compromise Amendment is implemented by SCI and Propco, whether such issues and disputes are between SCI and Propco or implicate any other parties in interest, the Debtors will seek judicial resolution of such issues or disputes by separate motion, filed on notice to all parties in interest. The Debtors anticipate that such subsequent motion will be brought before and heard by the Court prior to the confirmation hearing on the Joint Plan. In particular, any transfers of assets from SCI or the Operating Subsidiaries to Propco that are contemplated by the MLCA and that involve assets that are not presently collateral of Propco or the Mortgage Lenders shall be subject to separate Court approval, and the Debtors will seek to transfer such assets to Propco “free and clear” of any liens, claims and encumbrances.

V. Argument

A. The Debtors’ Decisions to Enter into the Second Compromise Amendment Are Supported by Sound Business Judgment, Are Beneficial to the Estates and Should Be Approved under Bankruptcy Code Sections 363(b)(1) and 365

33. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have required that such use, sale or lease be based upon a debtor’s sound business judgment. *See, e.g., In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 980 (Bankr. W.D. Wash. 1997), *aff’d*, 221 B.R. 243 (B.A.P. 9th Cir. 1998); *In re Plaza Family Partnership*, 95 B.R. 166, 173 (E.D. Cal. 1989); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). “The business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *In re*

1 *Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (*quoting Smith v. Van Gorkom*,
 2 488 A.2d 858, 872 (D. Del. 1985)); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr.
 3 S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management
 4 decisions”).

5 34. Courts grant particular deference to a debtor’s business judgment
 6 concerning the best way to make use of, and generate value from, unexpired nonresidential
 7 leases. *See National Labor Relations Board v. Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir.
 8 1982), *aff’d*, 465 U.S. 513 (1984) (“[t]he usual test for rejection of an executory contract is
 9 simply whether rejection would benefit the estate, the ‘business judgment’ test”); *In re*
 10 *Crystallin, LLC*, 293 B.R. 455, 464 (B.A.P. 8th Cir. 2003) (if the debtor establishes that rejection
 11 of an executory contract is of benefit to the estate, then the bankruptcy court should not interfere
 12 with the debtor’s business judgment except upon a finding of bad faith or gross abuse of business
 13 discretion, *citing Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043,
 14 1046-47 (4th Cir. 1985); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del.
 15 2003) (the sole issue to consider when evaluating a motion to reject an executory contract under
 16 the business judgment test is whether the rejection will benefit the estate).

17 35. The business judgment test is not limited to decisions to assume or reject
 18 contracts or leases, but also to decisions to revise, modify or otherwise negotiate resolutions of
 19 issues relating to contractual obligations during a chapter 11 case. *In re Carter Hawley Hale*
 20 *Stores, Inc.*, 1991 Bankr. LEXIS 2185 (Bankr. C.D. Cal. Oct. 24, 1991) (“Debtors and other
 21 parties to prepetition executory contracts and leases may agree to modify provisions thereof as
 22 part of a negotiated assumption so long as the contract, as modified, is approved by the Court
 23 and meets the business judgment standard” (internal citations omitted)).

24 36. The mutually beneficial, arms’ length agreements between SCI and
 25 Propco to modify their rent rights, remedies and obligations under section 365, in the exercise of
 26 their business judgment and in the best interests of the estates and creditors must be given
 27 deference. *See In re National Sugar Refining Co.*, 21 B.R. 196, 197 (Bankr. S.D.N.Y. 1982)
 28 (“Under the Bankruptcy Act, a majority of the courts applied the ‘business judgment’ test to

determine whether a trustee should be permitted to assume or reject an executory lease.”); *In re G Survivor Group*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (“Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered.”). Similarly, the decision to extend the deadline to assume or reject the Master Lease, on consent, is a permissible and rational decision, and must be approved by this Court under section 365(d)(4)(B)(ii) of the Bankruptcy Code.

B. The Second Compromise Amendment Resolves Disputes Between SCI and Propco and Represents a Fair and Equitable Settlement Which Should be Approved under Bankruptcy Rule 9019

37. The Second Compromise Amendment is a settlement, as was the First Compromise Agreement, of disputed issues between SCI and Propco that has been reached through arms’ length negotiations. Therefore, Bankruptcy Rule 9019 supports granting the relief requested in the Motion. It is axiomatic that compromises are favored in bankruptcy⁷ and are a normal part of the reorganization process. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)); see also *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986) (“The law favors compromise and not litigation for its own sake . . .”). Pursuant to Bankruptcy Rule 9019, in considering compromises, courts determine whether the compromise in question is fair and equitable and in the best interests of the estate. *In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003) (“Although the bankruptcy court has ‘great latitude’ in authorizing a compromise, it may only approve a proposal that is ‘fair and equitable’ to the creditors” (internal citations omitted)); see also *Protective Comm. for Ind. Stockholders of TMT Trailer Ferry, Inc.*, 390 U.S. at 424; *In re Best Prods. Co.*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994). Bankruptcy Rule 9019(a) commits the approval or rejection of a compromise to the sound discretion of the bankruptcy court. *In re Michael*, 183 B.R. 230, 232 (Bankr. D. Mont. 1995).

38. In pursuing a compromise or settlement, the parties are not required to

⁷ 10 Collier on Bankruptcy, ¶ 9019.01, at 9019-2 (15th ed. rev. 2008) (citing *Marandas v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Ore. 1993)).

1 reach the absolute maximum value for the estate. Rather, settlements should be approved if they
2 fall above the lowest point on the continuum of reasonableness. *In re W.T. Grant Co.*, 699 F.2d
3 599, 608 (2d Cir. 1983) (“responsibility of the bankruptcy judge . . . [is] to canvass the issues and
4 see whether the settlement, fall[s] below the lowest point in the range of reasonableness,”)
5 (internal citations omitted); *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976) (Court should not
6 conduct a “mini-trial” on the merits of a proposed settlement); *In re Planned Protective Servs.*,
7 *Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991) (same).

8 39. Finally, in light of the filing of the Disclosure Statement and Joint Plan,
9 and the current status of the Chapter 11 Cases, the relief requested in the Motion is particularly
10 timely and appropriate. Specifically, courts routinely conclude that it is permissible for a debtor
11 in possession to take action prior to a confirmation hearing that will enable the debtor to comply
12 with section 1129(a) of the Bankruptcy Code; especially where, as here, the action to be taken
13 will not harm the Debtors’ estates but rather will provide considerable financial and
14 administrative benefit in aid of both confirmation and in obtaining the best possible recovery for
15 creditors of the estates.

16 40. The Second Compromise Amendment is a part of the Debtors’ ongoing,
17 established and continuing efforts to confirm a plan that provides for the greatest possible
18 recovery to creditors in an expeditious and cost-effective manner. As this Motion makes clear,
19 resolution of the contractual obstacles created by the terms of the Master Lease has been a gating
20 issue in these Chapter 11 Cases since the Petition Date. As the Debtors have informed the Court
21 in the past on numerous occasions, the adjustments and accommodations to the Master Lease
22 embodied in the First Compromise Agreement and now continued in the Second Compromise
23 Amendment were (and are) prerequisites to both the smooth administration of these Chapter 11
24 Cases and the confirmation of the Joint Plan. Throughout these Chapter 11 Cases, the Debtors
25 have expended significant time and effort in order to achieve the necessary accommodations and
26 adjustments to the Master Lease that have been presented to this Court for approval. The First
27 Compromise Agreement, like the Second Compromise Amendment, was negotiated at arms’
28 length between SCI and Propco and entered into with considerable deference to the intricate

1 balance required among the financial needs of the Debtors' estates and the maximization of the
2 recovery to creditors.

3 41. The Second Compromise Amendment represents the latest step in the
4 Debtors' campaign of substantial and tangible progress towards the confirmation of a plan that
5 provides for the sale of substantially all of the assets of SCI and its debtor and non-debtor
6 subsidiaries pursuant to a public auction that will be approved at the confirmation hearing. As a
7 result, the negotiation and implementation of the Second Compromise Amendment represents
8 the studied, prudent exercise of the business judgment of Propco and of SCI, as debtors and
9 debtors in possession, and for the reasons set forth herein, this Motion should be granted.

10 **VI. Conclusion**

11 Wherefore, the Debtors respectfully request that the Court grant this Motion and
12 enter the Order annexed as Exhibit 2, together with such other relief as the Court deems proper.

13 Dated: April 7, 2010

Respectfully submitted,

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